



DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 86

[Docket ID: DOD-2013-OS-0009]

RIN 0790-AJ19

Background Checks on Individuals in DoD Child Care Services Programs

Correction

In proposed rule document 2014-23061 beginning on page 59168 in the issue of Wednesday, October 1, 2014, make the following correction:

§86.6 [Corrected]

In §86.6, on page 59172, in the third column, between the twelfth and thirteenth lines, insert the following text:

(ii) Individuals with a prior DoD affiliation must also complete an IRC, which includes an installation law enforcement check, drug and alcohol records check, and a check of the Family Advocacy Program (FAP) records for a minimum of 2 years before the date of the application.

(3) Criminal History Background Checks for FCC Providers and Contractors.

(i) In accordance with 42 U.S.C. 13041, complete a CNACI, which includes an FBI criminal history background check conducted through the Criminal Justice Information Services Division of the FBI and SCHR checks through State repositories of all States that a provider or contractor or prospective provider or contractor lists as current and former residences in an employment application. Results of an advanced FBI fingerprint check must be provided before completion of the full CNACI. Results for contractors may be used to determine employment under LOSS.

(ii) Individuals with a prior DoD affiliation must also complete an IRC, including an installation law enforcement check, drug and alcohol records check, and a check of the FAP records for a minimum of 2 years before the date of the application.

(4) Criminal History Background Checks for Others.

(i) In accordance with 42 U.S.C. 13041, only an FBI advanced fingerprint check is required for criminal history background checks for specified volunteers and persons 18 years of age or older residing in an FCC, foster, or respite care home.

(ii) Individuals with a prior DoD affiliation must also complete an IRC to include: an installation law enforcement check, drug and alcohol records check, and a check of the FAP records for a minimum of 2 years before the date of the application.

(5) Timely Completion. To ensure timely completion, the DoD Components will establish procedures to initiate or request criminal history background check results, follow up to ensure checks have been completed, and address situations where there is a delay in receiving results. In no event will an individual subject to this part be presumed to have a favorable background check merely because there has been a delay in receiving the results of the requisite background check. If no response from the state(s) is received within 60 days, determinations based upon the CNACI report may be made.

(c) Criteria for Disqualification Based on Results on Criminal History Background Checks. The ultimate decision to determine how to use information obtained from the criminal history background checks in selection for positions involving the care, treatment, supervision, or education of children must incorporate a common sense decision based upon all known facts. Adverse information is evaluated by the DoD Component who is qualified at the appropriate level of command in interpreting criminal history background checks. All information of record both favorable and unfavorable will be assessed in terms of its relevance, recentness, and seriousness. Likewise, positive mitigating factors should be considered. Final suitability decisions shall be made by that commander or designee. Criteria that will result in disqualification of an applicant require careful screening of the data. A disqualifying event may be the basis for a nonselection, withdrawal of a tentative offer of employment, ineligibility for facility access, removal from a contract, a suitability action under 5 CFR part 731, a probationary termination, an adverse action, or other appropriate action.

(1) Criteria for Automatic Disqualification. No person, regardless of circumstances, will be approved to provide child care services pursuant to this part if the background check discloses:

(i) That the individual has been convicted in either a civilian or military court (to include any general, special or summary court-martial conviction) or received non-judicial punishment (under Article 15 or chapter 47 of Title 10, U. S. C., also known and referred to in this instruction as “the Uniform Code of Military Justice (UCMJ)” (Reference (j) for any of the following:

(A) A sexual offense.

(B) Any criminal offense involving a child victim.

(C) A felony drug offense.

(ii) That the individual has been held to be negligent in a civil adjudication or administrative proceeding concerning the death or serious injury to a child or dependent person entrusted to the individual’s care.

(d) Suitability and Fitness Determinations for Individuals Involved With the Provision of Child Care Services. Suitability and fitness determinations for individuals subject to this part will be made in accordance with Volume 731, Volume 1231, and Subchapter 1403 of DoD Instruction 1400.25, part 1201 of 5 U.S.C., as appropriate. The following may be the basis for nonselection, withdrawal of a tentative offer of employment, ineligibility for facility access, removal from a contract, a suitability action under Reference (d), a probationary termination, an adverse action, or other appropriate action.

(1) Criteria for Presumptive Disqualification. Officials charged with making determinations pursuant to this part must include in the record a written justification for any favorable determination made where background check findings include any of the following presumptively disqualifying information:

(i) A FAP record indicating that the individual met criteria for child abuse or neglect or civil adjudication that the individual committed child abuse or neglect.

(ii) Evidence of an act or acts by the individual that tend to indicate poor judgment, unreliability, or untrustworthiness in providing child care services.